USAID MISSION ORDER

Bogota D.C. - Colombia

SUBJECT:

Public-Private Partnerships

DISTRIBUTION:

A (All Mission Personnel)

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PURPOSE/APPLICABILITY

This Mission Order (MO) establishes Mission guidelines and procedures on public-private partnerships (PPPs), including Global Development Alliances (GDAs). It also sets forth the management structure for the implementation of PPPs. This MO applies to all USAID/Colombia programs and activities that may involve PPPs.

AUTHORITY/POLICY

- ADS 103.3.8 provides the authority to conduct strategic planning and implement assistance objectives in accordance with ADS 201 (Planning) and ADS 202 (Achieving).
- Annex 14: Supplementary Guidance for PPPs [OP 2013] page 75, regarding PPP definition.
- ADS 303.3.27 for Global Development Alliance (GDA) under Grants and Cooperative Agreements to Non-Governmental Organizations dated June 1, 2006; AAPD 04-16 dated December 30, 2004; and the IDEA[1] Office GDA APS regarding GDAs.

BACKGROUND

Private sector investment in Colombia has increased significantly in recent decades. For USAID/Colombia, working directly with local and international private sector enterprises can lead to improved development results. Private sector partners can add value to USAID/Colombia programs through their resources, technologies, networks, markets, specialized expertise and knowledge, and by establishing presence and creating jobs in areas impacted by violence. Partnerships with the private sector not only leverage resources, but also create opportunities for innovation and effective market led development. Partnerships with the private sector also increase the likelihood of sustained development even after USAID support has ended.

DEFINITIONS

Private Sector - The part of the economy that is not state controlled, and is run by individuals or other companies for profit. The private sector encompasses all for-profit businesses that are not owned or operated by the government. Charities and other nonprofit organizations are part of the voluntary sector.

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[1] *Office of Innovation and Development Alliances (IDEA)*

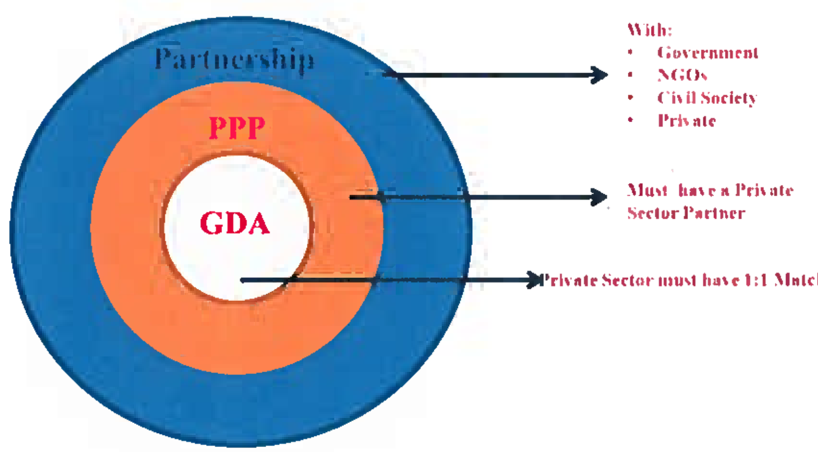
- Private Enterprises – Includes for-profit businesses and corporations, and social enterprises
- Private Equity or Private Financial Institutions – Includes private investment firms, mutual funds, or insurance companies
- Private Investors – Includes individual and group investors, and impact investors
- Private Business or Industry Associations – Includes chambers of commerce and related types of entities, except quasi-governmental associations
- Non-Governmental Organizations – Can be included as "private sector" only when the resources being contributed by the NGO are private in source and origin. If the NGO has a Grant or Cooperative Agreement with USAID, the NGO's "cost-share" contributions cannot count as private sector resources contributed to the PPP.

Partnership - A collaborative working relationship with a defined shared vision of what USAID and the partner(s) want to achieve together that taps into the respective strengths of different partners. The most effective partnerships are those in which risks, responsibilities and rewards are shared, and which address core interests of all parties involved. USAID is keen about working in partnership with a variety of partners - large multinational corporations, local businesses, universities, foundations, NGOs, diaspora groups, sector unions, producer associations, local organizations, community organizations, government agencies and other donors- to make a real difference in the lives of people.

Public-Private Partnership (PPP) - A collaborative working relationship where one or more partners come from the private sector (for-profit) in which the goals, structure, and governance, as well as roles and responsibilities, are mutually determined and decision-making is shared.

Further, a PPP is characterized by jointly defined objectives, and collaborative program design and implementation. Successful partnerships entail: complementary equities; transparency; mutual benefit; shared risk and rewards; and shared accountability.

What is a Partnership?



PPPs maximize development impact through the sharing of resources, skills, risks, and results. Three hallmarks of PPPs are: 1) enhanced sustainability of programs, 2) facilitated scale-up of interventions, and 3) leverage of significant private sector resources. A private sector partner must contribute resources in the form of financial resources, in-kind contributions, or intellectual property, and thus, is commonly called a 'resource partner.'[2] In exceptional cases a partnership may solely be based upon shared interests and non-monetary contributions. PPPs are not a stand-alone effort and must have a clear purpose that leads to a concrete development result under a DO of an approved CDCS.

[2] *Guidance for PPR FY 2013*

Global Development Alliance (GDA) - Is a PPP model that allows USAID to leverage at least 1:1 resources from private sector partners. A well-constructed GDA furthers the objectives of the USAID mission while benefiting the business interests of the resource partner. A partnership is considered a GDA when it meets the following criteria:

- At least 1:1 leverage (cash and/or in-kind) of USAID resources;
- Common goals defined for all partners;
- Jointly-defined solution to a social or economic development problem;
- Non-traditional resource partners;
- Shared resources, risks and results; and
- Innovative, sustainable approaches to development.

Memorandum of Understanding (MOU)
Under AAPD 04-16, Attachment 2, Section I.C a GDA Memorandum of Understanding is defined as a non-binding, non-obligating document that outlines the intent of PPP members to proceed in an agreed upon course of action. The main purpose of the MOU is to outline how all partners to a PPP, especially USAID and the resource partner, will work together to address a targeted development goal.

Although a MOU is not required for a GDA, MOUs are often considered essential to the formation of an effective alliance. The MOU may be drafted and executed at any time during the continuum of an alliance. The cooperative drafting of the MOU by the signatories is a valuable exercise that helps ensure that all partners share the same goals, expectations and desires. Ideally the nature and valuation of leverage should be agreed upon before a MOU is executed; therefore anticipated leverage amounts and reporting protocols should be included in the MOU whenever possible. MOUs can serve as a helpful guide for Contracting/Agreement Officers in the preparation and execution of the Implementing Partner award and must be included as part of the award file.

MOUs should address the following elements at a minimum:

- The purpose of the alliance
- The planned roles of each partner
- Shared understandings
- Expected results
- Procedures for modification or changes in program implementation
- Descriptions of anticipated leverage values and reporting protocols
- Required non-binding disclaimer language

Resource Partners - Under a GDA, resource partners are those private sector non-traditional USAID partners who bring resources, whether in cash and/or in-kind, to a partnership and are considered co-donors.

Leverage - New, non-public resources – whether money, technologies, or expertise – brought by the private sector and other non-traditional USAID partners to a GDA partnership. Leverage is not cost share and is not subject to the 22 CFR 226.23 requirements to be verifiable, reasonable, and allowable.[3] The most valuable leverage is:

- Significant in amount and in its ability to help USAID further its development impact.

[3] *Official leverage guidance can be found in Acquisition and Assistance Policy Directive (AAPD) 04-16 and ADS303.3.27*

- Resources that USAID would not be able to easily procure on its own.
- Resources that contribute to USAID's outcomes in a measurable way.

Leverage is an input, or contribution, made to the partnership's activities, rather than the outcome of the partnership activities. For example, USAID and a bank develop a partnership to increase financial services to small businesses. The partnership's activities include small business training, awareness raising and market analysis. The bank contributes their experts' time and the production of training materials to the partnership. These contributions would be considered "leverage." As a result of the partnership, the bank increases their loans to small businesses by $5 million. The $5 million in loans is not leverage, it is an outcome of the partnership. Leverage is an input, not an outcome.

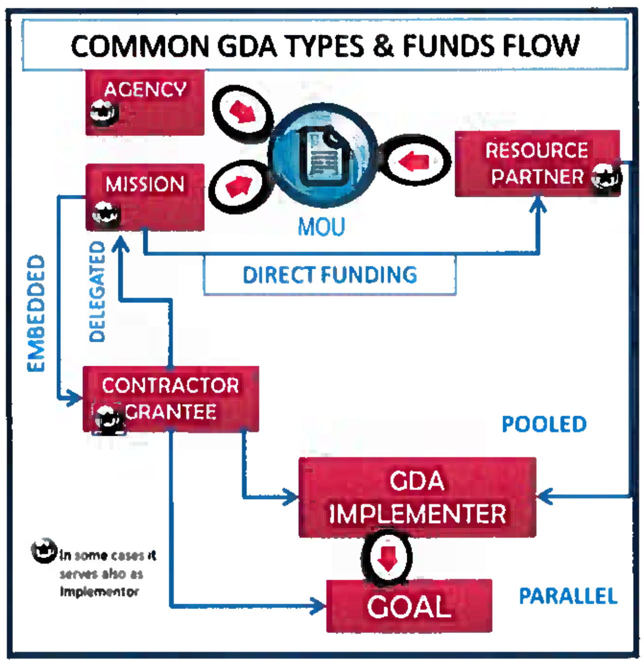
Generally, traditional USAID beneficiaries are not considered resource partners and their contribution is not leverage. For example, if USAID has a program in coordination with the private sector to support coffee farmers, the PPP cannot count the coffee farmer beneficiaries' own investments or revenue as "leverage." Nonetheless, cost sharing contributions from the communities and other sources are an important element of the USAID-beneficiary relationship. It demonstrates commitment to the project or activity and enables USAID to mobilize additional resources. It also improves program sustainability by establishing secure funding mechanisms, facilitates greater commitment by increasing partners' stake in program outcomes, and helps build confidence in communities' abilities to help themselves.

Shared Value vs. Corporate Social Responsibility PPPs

From a business perspective, PPPs where the private sector resource partner has a strong profit-making incentive (Shared Value) are more likely to create high impact and sustainable results versus a more passive philanthropic contribution (Corporate Social Responsibility).

Direct PPPs

Direct PPPs involve awards made directly by the Mission through Acquisition or Assistance instruments or through a Public Private Alliance Collaboration Agreement. In some cases, the implementing partner and resource partner could either be the same or affiliated entities.



Embedded PPPs

Embedding is the term used to describe the addition of a GDA to an existing USAID Implementing Partner (IP) project. GDAs may be integrated into existing USAID acquisition or assistance awards by modifying the implementing mechanism in order to accommodate the GDA. When integrating a GDA under an existing implementing mechanism, Contracting/Agreement Officers should take the lead in competition and mechanism modification issues.

Delegated PPPs

Regularly IPs establish relationships with private sector resource partners. In considering this model, USAID must weigh the disadvantages of relinquishing a direct relationship with resource partners against the efficiency gains from having IPs take responsibility for relationship building and maintenance. If USAID prefers a direct relationship endeavor, USAID and the private sector resource partner should endeavor to sign an MOU.

Parallel Financing
Under this approach, USAID and the resource partner reach agreement on how to work together to address a development problem, with each partner establishing a separate implementing mechanism (e.g, grant, contract) through which to provide resources to support the partnership (financial and/or in-kind).

Pooled Financing
Under this approach, USAID and the resource partner establish a formal partnership governance structure for the purpose of attracting resources and making joint program decisions. For this type of partnership, USAID support typically takes the form of a jointly funded grant to an institution affiliated with the private sector resource partner, or another NGO or PIO.

ROLES AND RESPONSIBILITIES

Successful development and implementation of PPPs require strong participation and coordination among offices in the Mission. To this end, USAID/Colombia will adopt a basic PPP coordination structure, set forth below.

Alliance Builder
The Alliance Builder manages and monitors the PPP related activities on a day-to-day basis. Effective alliances require an understanding of private sector opportunities and constraints, and how these intersect with development priorities. The Alliance Builder should clearly understand the private sector in Colombia, and USAID procedures on PPPs. The Alliance Builder serves also a secretariat function for the PPP working group. The key roles of the Alliance Builder are:

- Lead the PPP Working Group
- Lead alliance assessments that identify and prioritize sectors of the economy where development challenges intersect with business opportunities or constraints.
- Conduct on-site interviews to identify specific areas where private sector business interests intersect with development challenges and, in turn, how those intersections relate to USAID/Colombia priorities.
- Coordinate private sector roundtables and/or forums to share USAID priorities and develop options for PPPs.
- Convene the Private Sector Advisory Group
- Lead the development of a plan for engaging, negotiating, and finalizing formal partnerships with potential partners.
- Organize a formal Mission review of potential partnerships on as needed basis.
- Advise Relationship Managers on best practices and engagement strategies.
- Coordinate with the LAC Senior Advisor on PPPs and other Alliance Builders in the region.
- PPP coordination with the IDEA office and within the Mission.
- Contribute to regular and ad-hoc PPP and GDA reporting efforts and taskers.
- Maintain a list of ongoing PPPs and GDAs, as well as relevant relationship managers.
- Maintain the Alliance Opportunities Database, including all opportunities that can both deliver substantial impacts toward USAID development goals and be of value to the private sector.
- Maintain the Key Potential Partners Database, including key potential partner companies, business associations, investment funds, etc.
- Maintain the Private Sector Contacts database.

PPP Working Group (PPP WG)
The PPP WG includes heads of technical offices (DOs), PRO, OFM, OAA (or their representatives), RLA, and the Alliance Builder. The communications officer, the M&E specialist and other participants will be invited when needed. The PPP WG will be facilitated and coordinated by the Alliance Builder and should meet regularly every other week, or as considered necessary. The meetings will serve as a forum to:

- Discuss evolving PPPs.
- Share plans and activities.
- Facilitate discussions regarding issues of common concern.
- Review and make recommendations on PPPs being considered for funding
- Discuss any partnership-related activity or issue that will require management input.

Regular progress report meetings with the Front Office should be led by the Alliance Builder and include PPP WG core members as appropriate.

Relationship Managers

Relationship Managers are responsible for general oversight of partnerships with a single private sector entity. Relationship Managers will be named for private sector companies with whom the Mission has relevant relationship, either through direct partnership or partnerships through USAID implementers. The roles and responsibilities of a Relationship Manager include:

- Be the Mission's focal point person for the private sector enterprises.
- Conduct research analysis about the enterprises to better understand their interests.
- Update the PPP WG on relationships.
- When an alliance is established through a memorandum of understanding (MOU), the Relationship Manager will coordinate closely with the Legal Advisor, the Program Office and other relevant Mission offices and ensure that an implementation plan is in place to move the partnership activity forward.
- Coordinate and collaborate with the USAID/W Relationship Manager, if one exits for the relevant private sector entity.

Private Sector Advisory Group

The Advisory Group is an information-sharing forum of ten to twelve creative thinkers from the private sector, open to commit a few hours of their time each quarter to meet with USAID to share their perspectives, observations, and ideas on the country context, the peace process, and on development challenges. The group will be convened on a quarterly basis. The Advisory Group can also function as a sounding board for potential PPP opportunities. The Mission anticipates a trial period to determine the effectiveness of this approach. Once the trail period is over, the Mission will determine whether or not to continue this group.

PROCEDURES

There are a variety of paths by which a GDA proceeds from initial idea to implementation. This MO identifies protocols for the development and implementation of PPPs and aims to enhance coordination and effective decision-making within the Mission. Technical offices should proactively investigate opportunities for PPPs as early as possible in the design phase.

Generic Steps to Developing a Direct GDA

Step 1 - There are a wide variety of ways in which USAID and a potential resource partner may begin initial discussions:

- A proactive targeting effort by USAID
- USAID is approached by the potential partner
- A USAID implementing partner identifies the potential partner
- An introduction from a mutual acquaintance or from any other third party
- Potential resource partner learns about the USAID GDA APS and decides to submit a concept paper.

Regardless of how USAID meets the potential resource partner, these discussions may be fairly informal and informational. The only requirement at this stage is to keep the rest of the Mission informed of your discussions via the Alliance Builder and the PPP WG meetings.

Step 1(a) – If a potential implementing partner submits a concept paper to the GDA APS (see submission guidelines in **2013 GDA Annual Program Statement**), the USAID/Colombia Alliance Builder will provide the first level Mission review of the concept paper and make a recommendation to the Agreement Officer as to whether to request a full application. During the negotiation process, the application may go through various iterations of refinement. If the Agreement Officer decides to make an award, the Mission will follow the remaining steps below to formalize the PPP.

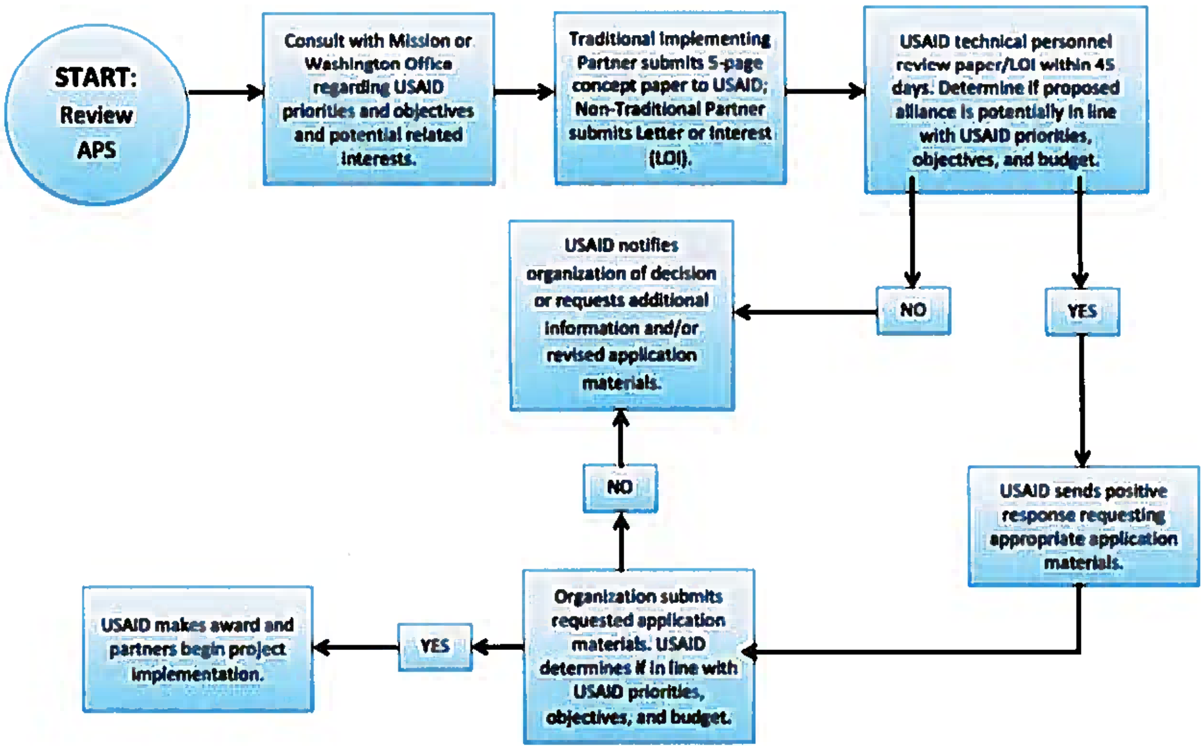
Step 2 – The Relationship Manager and/or the Alliance Builder will prepare a basic due diligence report on the partner. Please refer to Attachment 1 for step-by-step instructions for completing due diligence.

Step 3 - All potential GDA Concept Papers are subject to review and approval. If the GDA Concept Paper receives a favorable review, the next step is to make it concrete through an agreement between USAID and the resource partner through a MOU. The Legal Advisor should be involved from the early planning stages in developing an MOU, in order to ensure that the MOU does not create any legal obligations for USAID. A USAID-funded implementing mechanism (grant, contract, cooperative agreement, Public Private Alliance Collaboration Agreement, etc.) will be used to obligate funds for a GDA-supported activity An MOU does not obligate or commit USAID funds.

Step 4 - Following a favorable review, and the MOU, the activity shall be incorporated into a Project Appraisal Document (PAD) as the PAD is being developed or as an amendment.

Step 5 - Next, the proposed resource partner would be invited to submit a full application. That application may go through various iterations of refinement, until it is finalized as a successful application.

Step 6 - Once the formal arrangements have been finalized, the technical offices should plan a kick-off event. GDAs are excellent vehicles for promoting USAID's development goals and interest in partnerships and are often desired by our partners. The Development Outreach Coordinator (DOC) should be involved to ensure that the partnership starts off on the right foot, utilizing the correct branding principles for partnerships. The DOC should develop a public relations strategy to be used throughout the partnership.



Generic Steps to Developing an Embedded GDA
Steps 1 through 4 are similar to the Generic Steps to Developing a Direct GDA. Following a favorable review and once the incumbent USAID IP has been identified, the Contracting/Agreement Officers should be take the lead in determining funding flows, competition issues and mechanism modification issues.

Generic Guidance for Delegated PPPs
To ensure that USAID has adequate oversight over PPPs initiated by implementing partners (IPs) to support USAID funded programs, COR/AORs will encourage IPs to comply with the protocols listed below for PPPs where USAID contribution is higher than $100,000.

- USAID leads negotiations after initial discussions. Implementing partners can, however, save USAID significant time by evaluating and scoping potential partnerships, conducting initial interest meetings, and bringing vetted opportunities to USAID for further action. All IPs should be aware of USAID's interest in collaborating with the private sector and be encouraged to bring new ideas and partners to their COR/AOR.

- USAID will normally be the signatory on the MOUs. In the case of many alliances integrated into ongoing activities, implementing partners may be signatories as well.

- IPs keep COR/AORs informed of PPP efforts. IPs must keep the COR/AOR informed of all alliance-building efforts and COR/AORs must pass a list of PPP efforts to the Alliance Builder.

In general, contractors or grantees may play more of a role in PPPs where USAID contribution is $100,000 or less over the course of the PPP. In such PPPs, the USAID negotiation requirements will not apply. However, USAID might decide to sign an MOU if deemed necessary.

PPPs Tracking
The activities database managed in the Monitor software gives us access to information immediately, being the most appropriate tool for the tracking and monitoring of PPPs. Therefore, it is important to maintain in the database useful and of high-quality information.

PPPs Monitoring and Evaluation
Monitoring and evaluation (M&E) for PPPs should be guided by ADS Section 203, which applies to PPPs just as it does to any other development activity involving USAID program funds. To the extent feasible, common measures based on the DOs and results framework developed for similar activities being carried out by different partners should be used. Performance reporting on PPPs follows standard Agency practice. M&E criteria and indicators should be established with the PPP partners. USAID funds should be managed and reported on their use as with any other activity.

RESPONSABILITY

The Program Office (PRO) is responsible for updating or changing this Mission Order and for ensuring that the guidance is disseminated to USAID/Colombia staff.

CANCELLATION

The Mission Order will remain in effect until cancelled, superseded or amended.

Peter R. Natiello
Mission Director
USAID/Colombia

Attachments:

Attachment 1- Step-by-step instructions for completing due diligence

DUE DILIGENCE STEP-BY-STEP GUIDE

OVERVIEW

WHAT IS DUE DILIGENCE?

In reference to Global Development Alliances (GDAs), due diligence refers to the actions USAID takes to evaluate the risks and benefits of working with a potential private sector partner. GDA partners contribute resources as opposed to receive USAID funding, so they are not subject to the usual due diligence investigation completed through the procurement process as part of a responsibility determination. Because of this gap, Missions must complete a separate due diligence investigation (documented in a due diligence memorandum) on the partner before entering into a formal partnership with them[1]. Under GDA due diligence there are a total of five essential areas for investigation—corporate image, social responsibility, environmental accountability, financial soundness, and policy compatibility—that comprise the suggested dimensions for responsible due diligence.

Corporate Image	Social Responsibility	Environmental Accountability	Financial Soundness	Policy Compatibility
Public image	CSR policy	Monitoring	Publically traded	Excluded Parties List
Pending lawsuits	Labor Standards	Mitigating impact	Annual reports	Agency Policies
Negative media	Health and Safety	Improving performance	Audited financials	Foreign Affairs Sensitivities
Transparency	Code of Conduct		Years in business	

WHY DO IT?

Due diligence cuts down on unpleasant surprises and reduces the chance that the business practices of a partner will reflect poorly on USAID and its implementing partners, and on the U.S. Government. It reveals which partners have a proven and recognized commitment to principled business practices and should give USAID some information by which to decide whether to rely on a private sector partner's non-binding commitment for providing resource support for an activity. Due diligence will not typically provide a yes or no answer to the question: should we partner with a particular entity? Instead, the due diligence should document research and analysis conducted for the benefit of the Agency official who will be making the decision to enter into a partnership. The due diligence memorandum should provide a recommendation, based on the risks that have been identified, as to whether an alliance should be pursued with the potential partner.

WHEN SHOULD IT BE DONE AND BY WHOM?

Due diligence should:

[1] AAPD 04-16, Public Private Alliance and Collaboration Agreement, outlines the difference between due diligence and responsibility.

- Be conducted on all potential resource partners (those partners that contribute resources to a partnership with USAID); however, it is not typically conducted on implementing partners, such as NGOs or contractors.
- Begin as soon as negotiations with partners progress beyond the "getting to know you" stage, and continue on an ongoing basis for as long as the relationship exists. The due diligence should be presented to the Agency official who will decide whether to enter into the partnership well before serious partnership negotiations begin.
- Be conducted by the USAID mission or Washington office that is negotiating the partnership. Any time an agreement with a partner is amended or renewed, an update to the due diligence is advised.

WHAT ARE THE STEPS INVOLVED?

Since due diligence is such a crucial part of the partnering process, serious attention must be given to the topic before embarking on a partnership. Planning is essential, as it may take some time to gather appropriate information, consult subject matter and policy experts, analyze the information, and provide answers to questions and concerns from the Agency official deciding whether to enter into the partnership. Technical offices conducting the due diligence may need to consult with the Regional Legal Advisor, OAA shop, and Program Office early in the process to develop a good approach to conducting the due diligence in a particular case. The breadth and scope of the due diligence review should be comprehensive and should consider the five areas noted above. Remember, though, that it may not be necessary to investigate every possible avenue of consideration, particularly for small alliances. Due diligence memos should generally follow this outline, but should be modified to fit any specific topics or risks that arise.

STEP 1: PLANNING

Plan the due diligence steps so that the work can be completed well before partnership discussions are too far advanced. For private sector partners that present immediate concerns, it may be helpful to consult with the Regional Legal Advisor/General Counsel, Contracting Officer/OAA, Program Office, or other office to plan an efficient approach toward conducting the due diligence and determine which individuals should clear/review the due diligence memo.

Consider the kinds of questions that will need to be answered for the particular due diligence analysis (see Step 3). If particular areas of inquiry are going to be a focus, the information gathering stage can be tailored appropriately.

STEP 2: GATHER INFORMATION

Getting help

1. **Gather Information.** The first step in due diligence is to gather information. Search news articles, company reports and subscription-only resources, such as Dun & Bradstreet, Lexis-Nexis, Factiva and others.

2. **Risk Metrics Sustainability Reports.** GDA has a subscription to Risk Metrics, which provides independent sustainability analysis and reports on large, multinational companies. To request a Risk Metrics report search, contact gda@usaid.gov.

3. **GDA Database.** Find out where USAID has worked with the potential partner in other regions or in the past by searching the GDA database online.

4. **Other Web Searches.** Conducting other searches on the Web may tap into sources that are not described above. Be sure to conduct searches in the local language as well. Be sure to weigh the source of the information when considering the content of the information.

5. **Agency and US Government Policy.** Also be sure to check USAID, State and other US government resources to see if there are particular issues concerning the private sector partner's particular business sector, relationship with a particular country, government, or client, or other policy concern. In some situations, you may want to investigate the top managers or board members of a particular company. This could potentially include doing a search involving sensitive information to determine if the individual is eligible for a visa to the US, which is one way to identify risks to the agency.

Supplement and verify with local sources

Internet-based searches will only give you limited information. It is important to contact local sources for information about the company. Talk to the following individuals/organizations to get a clearer picture of the company's performance and reputation locally/regionally:

- US Embassy Commercial Services Officer: usually a wealth of business intelligence
- Potential partners' current customers, suppliers, and/or private sector or government partners
- Local press
- Relevant local associations and American Chamber of Commerce
- Consider asking the company directly for information, such as annual reports, etc.

STEP 3: ANALYZE THE INFORMATION GATHERED

IDEA/GP has prepared a list of questions that can serve as a guide toward identifying particular issues that the Agency official deciding whether to enter the partnership must consider. It is not necessary to answer each question in the due diligence memo. The purpose of the questions is to help the researcher make sure they have covered all the major areas of due diligence.

STEP 4: DRAFT DUE DILIGENCE MEMO

The analysis may result in red flags that will either suggest the partnership is not advisable or must be considered carefully before further discussions can take place with the potential partner. Mission or Operating unit personnel involved with pursuing the partnership and the Agency official, who will be deciding ultimately whether to enter the partnership, should be kept informed and involved in deciding whether input from USAID/Washington is needed.

What do you do if the due diligence turns up issues?

Given the size and scale of the company or the economic environment in which these companies operate, it is likely that some issues will surface. At this point, an analysis of the materiality of the issue must be undertaken, and in the end, a judgment call must be made. Conducting the information gathering and analysis early in the partnership discussion process will go a long way toward preventing programming delays or embarrassment resulting from USAID's need to pull out of a potential partnership at the last minute. Subject matter and policy experts within the operating unit, USAID/Washington, State Department, and other entities can assist in advising decision makers on whether to enter into an alliance, but ultimately the operating unit authorized to plan and implement activities weighs the risks against the benefits and decides whether to enter the alliance. In the case of alliances that result in MOUs, the USAID signatory to the MOU must make this determination. In the case of collaboration agreements, the agreement officer makes this determination.

Drafting the Memo

Present the due diligence memo to the Agency official who will ultimately decide whether to enter into the partnership/sign the partnership MOU and provide a copy to the cognizant contract or agreement officer. The memo should be completed and reviewed by the Agency deciding official well before serious alliance discussions begin with the potential partner.

STEP 5: ONGOING DUE DILIGENCE

The due diligence process does not end with the signing of the MOU. Actions or issues involving GDA partners can pose a risk to USAID at any point during a partnership. It is recommended that Missions and Operating Units complete an annual update to the due diligence; identifying any new issues that might affect USAID's involvement in the partnership.

DUE DILIGENCE RESEARCH QUESTIONS

A. CORPORATE IMAGE

1. Has there been anything in the media that would reflect negatively upon the company? If so, how has the company dealt with significant negative publicity?
2. Are there any pending lawsuits against the company?
3. Is the company looking solely for PR opportunities by aligning itself with USAID?
4. Is the company only or primarily looking for procurement opportunities or money from USAID?
5. Is the company willing to engage with USAID in a transparent manner without expecting an exclusive relationship (i.e., barring competitors)?
6. Is the company willing to accept limitations on the publicity (i.e., press and media coverage) of the alliance so as to ensure that USAID is not perceived to be endorsing the company or its products and services?

B. SOCIAL RESPONSIBILITY

1. Is the company primarily involved in tobacco or the manufacture or sale of firearms or narcotics, i.e., involvement in these activities constitutes a significant share of company's total portfolio?
2. Does the company have a good reputation (no serious red flag issue areas), especially in areas of corporate social responsibility (CSR)? In the case of new companies or companies with past CSR troubles, are they committed to instituting/improving a sound CSR policy?
3. Does the company have policies barring harmful child labor or forced labor?
4. Does the company have a non-discrimination policy governing the hiring and promotion of minorities, women?

5. Is the company accepting of unions or attempts to organize a union?
6. Does the company have a health and safety action plan for workers, including the handling of hazardous materials and the prevention of environmental accidents?
7. Does the company have a policy for codes of conduct, labor standards?

C. ENVIRONMENTAL ACCOUNTABILITY

1. Does the company collect and evaluate adequate and timely information regarding the environmental, health, and safety impacts of their activities?
2. Does the company set targets for improved environmental performance, and regularly monitor progress toward environmental, health, and safety targets?
3. Does the company assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle? And provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise?
4. Does the company maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities?
5. Does the company continually seek to improve corporate environmental performance, by encouraging, where appropriate, the adoption of technologies and operating procedures in all parts of the enterprise that reflect environmental best practices? Are its products or services designed to have no undue environmental impacts, be safe in their intended use, and be efficient in their consumption of energy and natural resources? Can they be reused, recycled, or disposed of safely.

D. FINANCIAL SOUNDNESS. (Reminder: When USAID is not providing funding to the private sector partner, due diligence does not rise to the level of making a responsibility determination).

1. Does the company appear to have the resources needed to fulfill its commitment in a non-binding agreement to support USAID programs?
2. Is the company publically traded and does it issue annual reports with audited financials?
3. Does the company have a long track record (how many years has it been in business)?
4. Does the company structure appear to be stable? In some cases in the past, corporate restructuring has led to the elimination of a company's CSR division.

E. POLICY COMPATIBILITY.

1. Is the company subject to US government sanctions?
2. Is the company involved in activities, countries, governments, business sectors, or customers that would cause a reasonable person to believe that USAID is acting inconsistently with its own or US government policy?

MITIGATING REPUTATION RISK FAQS

As Missions enter into the due diligence process, there are a number of different actions that can be taken with the information uncovered. The purpose of the following FAQs is to provide further guidance on how Missions can still form strategic partnerships if issues arise.

Can I enter a GDA that benefits USAID's private sector partner's business interest? What if my partners stand a chance of gaining a direct financial reward as a result of their alliance with USAID?

Yes, USAID may enter such an alliance, provided a legitimate development purpose exists and the USAID investment is carefully selected. However, U.S. Government funds may never be used to directly engage in profit-making. USAID mitigates its risk in alliances that present the potential for partners to profit by clearly establishing development objectives, by defining how such an alliance best achieves the expected results, and by investing in a facilitating mechanism via a civil society partner.

For example, a U.S agribusiness firm stood to benefit financially from the creation of a processing plant. To facilitate the project—which was given high priority by the local government, also a partner in the alliance—USAID funded research at a national agricultural research institute in order to identify viable sugarcane strains for the project area. As an alliance partner, the agribusiness firm used the research to complete its due diligence and to secure capital financing. In this case, allowing the agribusiness firm the prospect of financial benefit was determined to be a reasonable trade-off, considering no other industry players were willing to take the risk of establishing in-country growing and processing of this specific commodity. Further, the alliance project is expected to meet and exceed economic growth objectives by creating more than 3,000 new jobs and by stimulating growth in a new industry sector in which the country may have comparative advantage.

If alliance builders deem it necessary to further distance USAID from any potential controversy regarding the earning of income by an alliance partner, they might consider requiring the reinvestment of profit as "program income" to be used for follow-up activities. Depending on the nature of the alliance, this may be facilitated by using standard provisions for program income in the grant to the nongovernmental organization implementing partner.

Of note, the U.S. Trade and Development Agency (USTDA), which promotes U.S. commercial interests and host-country development objectives in developing and middle-income countries, requires U.S. firms receiving USTDA grants to reimburse part or all of USTDA's funding if an individual project is implemented and if the company receives substantial economic benefit. These commitments are included in a letter agreement between USTDA and the company. Alliance builders might consider how such an arrangement could be applicable in a USAID GDA setting.

Can USAID help finance the creation of a profit-making enterprise as part of an alliance, such as a processing plant?

Yes, provided a legitimate development purpose exists. For example, after exploring multiple investment alternatives, USAID could enter into an alliance to aid in the financing or building of a processing plant or operation. As noted earlier, however, U.S. Government funds can never be used to directly engage in profit-making. Thus no profit may be retained by the profit-making enterprise during the life of the assistance award. An alliance of this sort would require a specific plan to avoid profit-making during the life of the award or a mechanism to reprogram profits during the life of the award.

A familiar scenario for this type of GDA has arisen in agriculture-based economies which are attempting to move from a grow-harvest-export model to a grow-harvest-process-export model in order to capture greater economic value in-country. Often, local private sector capital is not available and few private sector firms are willing to risk starting such operations due to poor business infrastructure.

In determining how best to approach such situations, alliance builders should first explore investment options outside of financing the actual plant. Critical questions to consider include:

- Can alliance funds be used in a facilitative way to address finance impediments or business infrastructure improvements?
- Rather than investing in the actual building of the plant, can USAID funds be used to add legitimacy to the project in order to secure financing, such as in providing market research? Is there another way to draw in private or multi-development bank financing?

If USAID monies—implemented through a capable NGO—are to be used in the actual building or financing of a plant, what is the plan for complying with profit restrictions (as described above), for mitigating against reputation risk, and for avoiding potential negative effects in the marketplace?

- What is the plan for "reinvesting" program income or profit during the life of the assistance award?
- What is the plan for transferring ownership after the plant is built and before it engages in profit-making activities?
- How will you ensure broad enterprise ownership by key stakeholders—especially local stakeholders?
- What is the exit strategy, so that investment in an actual plant is a one-time intervention?
- What is the plan for stimulating growth in related sectors, such as supply chain participants?
- How do we prevent picking a winner or creating a monopoly?

In short, alliances of this sort are technically possible, but alliance builders must plan well to comply with the law, avoid reputation risk, reprogram any potential profits during the life of the assistance, and ensure equitable ownership once the project is complete.

Can I enter an exclusive alliance with a private sector partner, rather than opening it up to multiple private sector players in a given industry?

Prior to the submission of a formal alliance application, alliance builders are free to explore potential alliances (exclusively or not) with any private sector entity. Once a formal application is submitted, then the standard process for unsolicited applications is to be followed.

In some situations, a private sector entity may be interested in entering an exclusive GDA with USAID as a **resource partner**. While alliance builders should explore the inclusion of other private sector players, a single private sector alliance of this sort is acceptable, provided a programmatic need exists and proper due diligence is conducted. However the Mission should make every effort not to guarantee any exclusivity other than a 'first mover advantage'. Additionally, if a potential partner is adamant about this being a condition of partnership, consider negotiating a time limited exclusive relationship or limit it to a particular geographic location.

In other situations, a for-profit partner might possess a unique skill, technology, or capability that is of particular programmatic and development interest to USAID, but from the partner's perspective would require an exclusive GDA. In a clean water alliance, for example, USAID agreed to limit for-profit participation to only one partner. This partner had invested heavily in researching and developing a proprietary technology for the elimination of waterborne diseases, even though market demand was questionable. No other competitor had developed a product based on the same technology. Because it was a key programmatic goal for USAID to test new and potentially far-reaching technologies for water purification, it was determined that an exclusive-type GDA with this partner was a reasonable trade-off (i.e. there was only one for-profit alliance partner).

In such exclusive GDAs, USAID mitigates risk by investing in the alliance through a civil society partner, rather than in the for-profit enterprise itself. In such cases, the reputations and skills of civil society partners take on additional importance in adding credibility to the alliance. Strong civil society partners add transparency and focus efforts on institutional reform and on stimulating local competition. In the example above, USAID funded an outside implementing partner to conduct market research and to purchase product from the previously mentioned company.

Alliance builders may accept exclusive-type applications and enter into exclusive-type alliances, but significant programmatic need should exist to exclude other for-profit entities, particularly if USAID decides to fund the for-profit enterprise directly. In most exclusive GDA cases, however, USAID mitigates risk by investing in a civil society partner, rather than in the for-profit enterprise itself.

Can USAID promote or purchase a specific product or brand via a GDA?

The U.S. Government cannot promote, endorse, or market a particular product or entity.

However, under certain conditions, alliance builders might fund the market testing of a particular product or technology and even facilitate the purchase of a specific product through grant funds.

In the case of the water alliance mentioned in the previous section, USAID funds were used to buy and test market a product—the only product of its kind on the market—via an outside actor. Because this partner possessed predominant capability—no competitors had developed a competing product based on the same technology—purchase competition was waived. Without paying for this specific product (via a grant to civil society partner), USAID would not have been able to test the technology in target countries and the partner would not have done it on its own without a more promising business case.

Before endorsing or appearing to endorse a specific product through an alliance, alliance builders should exhaust other available options. Typically, broad mechanisms exist to create market demand or to identify technical solutions to development problems. One alliance built generic demand for higher quality mosquito nets by facilitating broad manufacturer participation via a quality seal program. In this case, several industry participants signed on to the alliance, since they stood to influence the standards to their favor.

If USAID funds research as part of a GDA, who retains patent or property rights as a result of the funding? Can USAID select an alliance partner to commercialize the technology, patent, or intellectual property?

As a general rule, USAID retains a non-exclusive, irrevocable license to use intellectual property developed with USAID funds. However, specific rules vary according to intellectual property type (i.e., patent vs. copyright) and recipient (e.g., university vs. NGO research organization, etc.). For specific guidance on USAID rights retained, first look to the standard provisions of the contemplated agreement, then contact your Contracting Officer or legal advisor for further information.

In some GDA circumstances, it makes sense for USAID to fund the research or development of intellectual property at a research institution, with a private sector partner agreeing to purchase commercial rights (from the research institution) in order to market the technology or product. In a vaccine alliance, for example, USAID funded research at a research institution to identify a vaccine to address a life-threatening disease inflicting livestock. A partner agreed to purchase commercialization rights and to market the product. Considering the significant costs associated with commercializing the vaccine and the important development impact, it was a reasonable trade-off for USAID to fund research that would be purchased by the commercial sector partner on an exclusive basis in targeted markets.

Are there any industries USAID should never enter an alliance with?

It is not wise for USAID to enter alliances with organizations whose reputation would adversely affect the overall mission of USAID or specific activities, regardless of the industry. In all cases, USAID alliance builders should conduct adequate due diligence based on the aforementioned guidelines. Certainly, the nature of their core businesses will heavily influence the CSR objectives of prospective partners.

Are there any circumstances under which USAID could enter alliances with subsidiaries or joint ventures (JV) of companies with which we have due diligence concerns?

Circumstances are conceivable under which USAID would enter an alliance relationship with a subsidiary, sister company, or JV of a company with which we have due diligence concerns. For instance, a well-known partner in a USAID alliance is a subsidiary of a company with which USAID has due diligence concerns. This alliance partner is one of several corporate alliance partners that have an interest in promoting the production and marketing of a commodity and in improving market access and income for small-scale producers.

In this alliance and others like it, USAID alliance builders mitigate the risk to USAID's reputation by:

- Assessing the extent to which the prospective partner is committed to CSR. What other programs is the company implementing to improve its CSR track record?
- Defining the particular development value the prospective partner brings to the alliance.
- Structuring the alliance so that it has broad appeal across the targeted sector. Having participation by several industry players will mitigate the effects of one partner with potentially damaging corporate relationships.
- Clearly understanding the nature of business relationships. How many degrees of separation exist between the offending company and your potential partner? How integrated are the companies? What is the potential for a public relations disaster? Are there ways to structure the deal to mitigate exposure of potentially damaging relationships? Being able to answer these questions and respond to them in a persuasive way is critical to knowing whether to enter an alliance of this nature.